

REMARKS

Claims 1-16 are pending. Claims 1-3 and 6-16 are rejected and claims 4-5 are objected to.

Applicants thank the Examiner for the indication that claims 4-5 would be allowable if rewritten in independent form to overcome the 35 U.S.C. § 112, second paragraph, rejection thereof.

Claims 1-3, 6-9 and 11-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Arcella et al. (U.S. Patent No. 6,509,073) in view of Stoeppelmann (U.S. Patent No. 5,869,157). Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Arcella et al. in view of Stoeppelmann, as applied to claim 1, and further in view of Krause et al. (U.S. Patent No. 5,958,532).

Applicants respectfully submit that Arcella et al. is not a 35 U.S.C. § 102(e) reference for purposes of the above rejections under 35 U.S.C. § 103. Section 103(c) states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

(35 U.S.C. § 103(c)). The Manual of Patent Examining Procedure (MPEP) states that common ownership may be established by the filing of a statement to the effect that the application and patent were, at the time the invention was made, owned by or subject to an obligation of assignment to the same company (MPEP § 706.02(I)(2)).

As such, Applicants respectfully submit that Arcella et al. and the above-identified application were commonly owned or subject to an obligation of assignment to the same company at the time the invention was made. In view of MPEP § 706.02(I)(2), Applicants respectfully submit that the above statement is sufficient to establish common ownership, such that Arcella et al. is overcome as a 35 U.S.C. § 102(e) prior art reference. However, in order to further expedite prosecution, Applicants enclose a Declaration which states that the application and Arcella et al. were commonly owned or under an obligation to assign to the same company at the time of the invention.

Thus, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-3, 6-9 and 11-16 under 35 U.S.C. § 103(a) as obvious over Arcella et al. in view of Stoeppelmann, and the rejection of claim 10 under 35 U.S.C. § 103(a) as obvious over Arcella et al. in view of Stoeppelmann, as applied to claim 1, and further in view of Krause et al.

In view of the above remarks, Applicants respectfully submit that this application is in condition for allowance and request favorable action thereon.

In the event this paper is not considered to be timely filed, Applicants hereby petition for an appropriate extension of time. The fee for this extension may be charged to our Deposit Account No. 01-2300. The Commissioner is hereby authorized to charge any fee deficiency or credit any overpayment associated with this communication to Deposit Account No. 01-2300, referencing Attorney Docket No. 108910-00057.

Respectfully submitted,
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Enclosures: Declaration under 37 C.F.R. § 1.132